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JUN 04 2007

In re Application of:

SCHON, DONALD A. et al

Serial No.: 10/670,861

Filed: Sep. 24, 2003

Docket: MED-0005D1

Title: METHODS OF MAKING A
MULTILUMEN CATHETER ASSEMBLY

DECISION ON PETITION TO
ENTER AMENDMENT AFTER
FINAL

This is a decision on the petition filed on Oct. 31, 2006 to enter the amendment after final under 37 CFR 1.116. The petition is being considered pursuant to 37 CFR 1.181 and no fee therefore is required. The petition fee paid in the amount of \$790.00 will be refunded upon request.

The petition is **DISMISSED**.

This application comes before the Technology Center Director for review of prosecution, in particular for review of the office letter (advisory action) of Oct. 23, 2006. Petitioner opines that the examiner's refusal to enter the amendment after final filed on Sep. 28, 2006 was improper because there was no new issue raised in the amendment.

Discussion and Analysis

In response to the amendment after final filed on Sep. 28, 2006, the examiner stated in the advisory action that "Applicant amended independent claims 22 and 35 so as to change its scope and cause further search and consideration after a final rejection was mailed". Petitioner argues that newly amended claims 22 and 35 did not "raise new issues requiring further search" as the advisory action maintains. Petitioner believes that the examiner has already considered such limitation of "thick integral internal septum" presented in the previous amendment filed on May 8, 2006. Therefore, the examiner was wrong in holding such limitations as "new" issue(s) referred to by the advisory action. Petitioner further submits that the subsequent amendment after final provides express details of such a "thick integral internal septum" and thus the issue is not "new".

Review of the application and of the claims shows that on May 8, 2006 an amendment was entered amending claims 22 and 35 containing the language "...thick integral internal septum". This language defines a method of making a multilumen catheter assembly with a process step to form a unitary catheter tube having a distal portion and a distal end portion terminating in a distal end, a proximal portion terminating in a proximal end, and a first lumen and a second lumen separated from each other by a thick integral internal septum. These claims were fully treated in the final office action of Jul. 26, 2006. The proposed after final amendment to claims 22 and 35 submitted by petitioner on Sep. 28, 2006 contained the language "a second lumen initially separated from each other by a thick integral internal septum from one side of the catheter to an opposed other side thereof, the septum being of generally constant thickness in cross-section". This language defines a method of making a multilumen catheter assembly with a process step to form a unitary catheter tube having a distal portion and a distal end portion terminating in a distal end, a proximal portion terminating in a proximal end, and a first lumen and a second lumen separated from each other by a thick integral internal septum from one side of the catheter to an opposed other side and generally with a constant thickness in cross section. Clearly this requirement of a thick integral internal septum "from one side of the catheter to an opposed other side thereof, the septum being of generally constant thickness in cross-section" is new. That petitioner may have intended the claim to read this way prior and is therefore of the opinion that he has not changed the claim scope is not probative. Patent examiners are charged with giving the claims the broadest reasonable interpretation of the claim language in light of the specification and as such claim draftsmanship requires great precision. In the instant application, a method of making a multilumen catheter assembly with a process step to form a unitary catheter tube having a distal portion and a distal end portion terminating in a distal end, a proximal portion terminating in a proximal end, and a first lumen and a second lumen separated from each other by a thick integral internal septum is considered to be of different scope when compared to a method of making a multilumen catheter assembly with a process step to form a unitary catheter tube having a distal portion and a distal end portion terminating in a distal end, a proximal portion terminating in a proximal end, and a first lumen and a second lumen separated from each other by a thick integral internal septum from one side of the catheter to an opposed other side and generally with a constant thickness in cross section.

Entry of amendments after final rejection is not a matter of right (see 37 CFR 1.116). The review of the record shows that the examiner was in compliance with proper examining practice as set forth in MPEP 714.13 in refusing entry of the after final amendment submitted Sep. 28, 2006. The examiner did not abuse his discretion or act in an arbitrary or capricious manner in denying entry of the proposed claims after final for the reasons stated. Therefore there is no basis for granting the relief requested.

Conclusion

For the foregoing reasons, the relief requested by petitioners will not be granted. Specifically, the examiner's refusal in admitting the amendment after final filed Sep. 28, 2006 is proper.

The application is being forwarded to SPE of Art Unit 3761 for further processing. Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail

date of this decision, 37 CFR 1.181(f). No extension of time under 37 CFR 1.136 (a) is permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181." Any inquiry regarding this decision should be directed to Henry Yuen, Special Program Examiner, at (571) 272-4856.

The petition is dismissed.

for Karen M. Young
Frederick R. Schmidt, Director
Technology Center 3700